FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.565 OF 2006

Office notes, office Memoranda of Coram, appearance, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Mr.M.S. Prasad for the Applicant.
Mr.V.P.Vaze for the Respondent No.1.
Mr.A.S.Shitole, APP. for the State.

CORAM : R.S. MOHITE,J.
DATED : 22/3/2006.

P.C.

1. Heard both sides.

2. Rule. By consent, rule made returnable forthwith.

3. This application impugns an order dated 9.1.2006 by which the Additional Sessions Judge, Greater Bombay has dismissed the appeal for non compliance of the earlier order of the court dated 12.12.2005. The earlier order of which there is non compliance was an order suspending substantive sentence in

relation to the conviction under Section 138 of the Negotiable Instruments Act by the Metropolitan Magistrate 23rd Court Esplanade, Mumbai. The appellate court suspended the sentence subject to direction to the appellant to deposit sum of Rs.1,50,000/-. It appears that on one occasion written application was made for extension of time to deposit and the said application was granted and time to deposit was extended till 9.1.2006. However, when the appeal next came on the board on 9.1.2006 once again application was made for extension of time. This application has been rejected by the impugned order and the appeal has been dismissed for non compliance of the order. In my view, the impugned order will have to be set aside. If there was non compliance of the order in question then proper order to pass should have been to withdraw the suspension of the substantive sentence. It was not proper to dispose of the appeal itself.

In the circumstances, the impugned order dated 9.1.2006 passed by the Additional Sessions Judge is quashed and set aside and the appeal being Appeal No.695/2005 is restored to the file. It is however, directed that the suspension of the substantive sentence is vacated and the appellant will have to under go substantive sentence. The order granting bail is also revoked and the applicant may be taken into custody by suitable legal process. The appeal may however, be decided on merits. Rule is made absolute and the application stands disposed off.

4. The roznama tendered by the applicant is taken on record and marked "X" for identification.

(R. S. MOHITE, J.)